

certified nurse educators. By letter of March 9, 1993, Assistant Superintendent Mark Masterson notified the PELRB that the Hampstead School Board took exception to the inclusion of school nurses in the teachers' bargaining unit. Thereafter, this case was heard by the undersigned hearing officer on May 27, 1993.

FINDINGS OF FACT

1. The Hampstead School District (District) is a public employer of teachers and other professional and non-professional employees as defined by RSA 273-A:1 X.
2. The Hampstead Education Association is the duly certified bargaining agent for teachers and other professional employees employed by the District.
3. The job description for school nurses is split into 5 sections and requires them to (a) care for ill students and staff, (b) oversee the health of students and staff, (c) detect health problems and counsel parents and teachers about the problem, (d) counsel students, teachers and parents on health matters and (e) administer the school health program. Item (d), above, is further broken into the requirements to serve as liaison between parent, student and teachers, serve as resource person for teachers, and assist in teaching health. (Association Ex. No. 5)
4. Positions already in the bargaining unit possess similar characteristics and job requirements to those performed by school nurses. For example, the school psychologist counsels students, guidance counselors and families, consults with teachers, participates on the PPT team and engages in case management. Guidance counselors furnish information to students to assist in self-understanding, assist in personal problems, maintain records, confer with staff and parents and become involved in curriculum development, including health education. The media generalist is required to maintain teacher and parent rapport and to contribute to staff rapport, respect and cooperation (District Ex. Nos. 7, 8 and 9). The reading specialist, likewise, confers with parents, interprets test results, administers a program and budget, and is a member of the PPT. (District Ex. No. 6)
5. Nurses are compensated on both an hourly rate (from \$11.93 to \$12.46 per hour) and an annual rate (from \$16, 284 to \$17,008). Both rates are set

forth on their letters of agreement (Assn. Ex. No. 3 and District Ex. No. 10) as is their work year, set at 195 days (at seven hours a day), inclusive of 180 school days, 1 day before school, 9 holidays and 5 vacation days. Teacher contracts set forth only an annual salary and are not to exceed 186 days. Vacation days and holidays are incorporated into the teachers' schedule and are not set forth separately in their individual contracts. (District Ex. No. 11)

6. Nurses work seven hours per day and are on premises at roughly the same time as teachers and students. Unlike teachers, they cannot leave the school grounds and are excluded from extra duties (cafeteria, bus, playground) because of their day-long responsibilities, as is likewise the case for the school psychologist, guidance counselors, reading specialists and the media generalist.
7. The professional consultative role of nurses has increased in recent years due to their involvement in such new areas as medical and emotional referrals, drug abuse education, greater emphasis on human sexuality education, nutrition education, and education involved with the "mainstreaming" of the student population. Mainstreaming has caused teachers to place more reliance on nurses to identify ailments and syndromes in the student population. Nurses may use the same kind of instructional materials used by teachers, e.g., videos, pamphlets, charts, posters, models, and self-generated materials. Unlike the "patch-up, fix up" mode of the past, school nurses are now involved in detecting and educating about chemical dependencies, communicable diseases and dysfunctional home environments. These duties have increased parental contacts. Screening techniques employed are now more complex and more extensive than in the past.
8. Both nurses and teachers are required to maintain student records (albeit of a different nature), to consult with parents, to counsel and educate students and to evaluate students, whether educationally or medically; however, nurses issue no "grades" to students, and are not assigned extra duties such as lunch duty or recess, as noted above.
9. Nurses employed by the District now share and have a greater self-felt community of interest with other professional employees, such as teachers, teaching specialists, media generalist, school psychologist

and guidance counselors. Likewise, members of the Association's bargaining unit have experienced and feel a community of interest with the nurses.

10. RSA 200:29 provides that public employers, such as the District, may appoint a school nurse who "shall be a registered professional nurse currently licensed in New Hampshire." (Emphasis added) (See also Code of Administrative Rules, ED 511:16).
11. Job responsibilities for nurses may involve assessing special needs students, providing individual health education and/or rendering on-side aide, counseling students and parents, dealing with special and/or ongoing health care needs (e.g., diabetic cases, administering medication), and/or referral of medical problems to appropriate specialists for additional attention. While nurses do not spend the majority of their time in a classroom education environment this is also true for other positions in the teachers' bargaining unit, e.g., guidance, specialists and the media generalist.
12. Nurses enjoy many of the same benefits conferred on members of the professional unit (e.g., dental insurance, life insurance, sick leave and vacations and holidays) with the primary distinguishing characteristics being one of degree or the manner in which they are described, not one of entitlement. To the extent there are differences in either benefit entitlement or extent of those entitlement, those differences are not sufficient to remove the community of interest which exists under RSA 273-A:8 I (a) and (d).
13. The current collective bargaining agreement for professional employees is for the period 1992-1995. Notwithstanding attempts to modify the recognition clause of this agreement during the course of negotiations to include nurses, there is no evidence that either side agreed to waive its right to pursue this issue to the PELRB or that this effort was abandoned by the Association as a specific quid pro quo for an offsetting benefit.

DECISION AND ORDER

It has been common practice for school nurses to be placed in bargaining units with teachers since the New Hampshire Supreme

Court issued Appeal of Bow School District, 134 N.H. 64, in 1991. The professional characteristics and responsibilities of school nurses have changed conspicuously over the past few years as evidenced not only by the foregoing findings but also by the testimony offered to the hearing officer. See also Sugar River Education Association (Decision No. 93-71, June 15, 1993). As the PELRB was instructed in Bow (134 N.H. 64 at 69), "The PELRB must have the discretion in each case to survey several factors in determining whether a particular school nurse position is appropriately included in the teachers' bargaining unit." Findings No. 3, 4, 7, 9 and 11 are sufficient by themselves to warrant inclusion in the teachers' bargaining unit. A change in work requirements "reflecting the need for more daily contact with teachers, students and parents, could constitute a change in circumstances sufficient to permit a school nurse to be included in the teachers' bargaining unit because the PELRB could reasonably determine that it intensified the community of interest between the school nurses and the teachers" as well as other members of the teachers' bargaining unit. Appeal of Bow School District, 134 N.H. 64 at 72 (1991) and Sugar River Education Association, supra. Such is the case here.

The foregoing increasing intensity of the community of interest between the teachers and the nurses is further supported by similarities in work locations, instructional responsibilities and techniques, certain (but not all) benefits, length of work day, and intensity of responsibility placed on each job category. Findings No. 5, 6 and 12 and RSA 273-A:8 I (a) and (9d). In some instances, nurses are actually on premises longer and in a more restrictive capacity than applies to teachers and other members of their bargaining unit. Both teachers and nurses have individual contracts which set forth an annual rate of compensation, notwithstanding that the nurses' compensation also sets forth an hourly rate. Finding No. 5. There is no doubt that employment of year-long duration is contemplated by those documents as they apply to teachers and nurse alike.

Given duties which are increasing in scope and detail, responsibilities, interaction with teachers and other members of the teachers' bargaining unit, the role in the educational process (inclusive of pupils, parents and other professionals), the mutual self-felt community of interest, and consistent with the PELRB's decisions in Merrimack Teachers Association (Decision No. 93-02, January 18, 1993), Goffstown Educational Support Staff Association (Decision No. 92-61, April 2, 1992) and, most recently, Sugar River Education Association (Decision No. 93-71, June 15, 1993), the school nurses must be found to have presented compelling arguments justifying their inclusion in the broadly based professional bargaining unit which includes teachers and other personnel. The hearing officer concurs with those arguments over those presented by the District; therefore, the inclusion of the nurses is warranted.

So ordered.

Signed this 16th day of June, 1993.

A handwritten signature in cursive script, appearing to read "Parker Denaco", written in black ink.

PARKER DENACO
Hearing Officer